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CODIFYING THE LAW OF CONDITIONAL SALES.

The validity of contracts for the sale of goods upon the condition that the property therein shall not pass until the price has been paid, although possession is given to the buyer, is well established at common law. These contracts are "legally impossible" in Louisiana, under the civil law of that state;¹ and in few common-law jurisdictions such a reservation of property is worthless as against the buyer's creditors or vendees.²

The Illinois decisions declare such reservations to be in fraud of the chattel mortgage act, operating to deceive and defraud third persons "by the appearance of ownership in one, while the title is really in another".³ The act in question has been understood to indicate a rule of public policy avoiding all agreements for liens or reservations which are not registered in accordance with its provisions.⁴

Pennsylvania courts appear to have been misled by cases decided in England, under the "reputed ownership" provisions of

¹Barber Asphalt Paving Co. v. St. Louis Cypress Co., Ltd. (1908) 121 La. 152, 46 So. 193, overruling Baldwin v. Young (1895) 47 La. Ann. 1466, 17 So. 883, and applying Civil Code Article 2456, viz., "The sale is considered to be perfect between the parties, and the property is of right acquired to the purchaser with regard to the seller, as soon as there exists an agreement for the object and for the price thereof, although the object has not yet been delivered, nor the price paid." Compare this with § 1 (3) of the Uniform Sales Act: "A contract to sell or a sale may be absolute or conditional."

²Coors v. Reagan (1908) 44 Colo. 126, 96 Pac. 966; Wender Blue Gem Coal Co. v. Louisville Property Co. (1910) 137 Ky. 339, 125 S. W. 732; Lincoln v. Quynn (1888) 68 Md. 299, 11 Atl. 848, 6 Am. S. R. 446, and cases in the next four footnotes.

³Ketchum v. Watson (1860) 24 Ill. 591, 592, citing Thompson v. Yeck (1859) 21 Ill. 73. See comments on the Illinois cases in Harkness v. Russell (1886) 118 U. S. 663, 678, 7 Sup. Ct. 51, and in Jones v. Clark (1894) 20 Colo. 353, 38 Pac. 371.

⁴Hervey v. Rhode Island Locomotive Works (1876) 93 U. S. 664, 672.

the bankruptcy statute, which they treated as based on common-law principles.⁵ But in Pennsylvania it has been easy to evade the operation of this doctrine. All that the parties need do is for the seller to lease the goods to the buyer who agrees to pay the price under the guise of rent, and the transaction is valid not only between the parties, but against the buyer's creditors and purchasers.⁶

In both states conditional sales of railroad equipment, and in Pennsylvania conditional sales of fixtures, also, have been validated by legislation,⁷ provided the contracts are made and registered in accordance with the statutory requirements.

The New York decisions were conflicting, for a time, as to the rights of innocent purchasers for value from a conditional vendee,⁸ but in 1869 the court of appeals settled the controversy in favor of the conditional vendor and affirmed the view of the common law which prevailed in England and in nearly all of our jurisdictions.⁹ In an earlier case,¹⁰ Judge Comstock remarked:

"If the question had never been decided, it might, perhaps, be more in accordance with the analogies of the law to regard the writing given on the sale as a mere security for the debt, in the nature of a personal mortgage."

The Kentucky courts hold that such sale "contracts are mortgages, and are not valid against purchasers for value or creditors unless recorded"; and, though recorded, whenever they relate to property to be subsequently acquired, they are, in that state, void against the mortgagor's creditors or purchasers.¹¹ In Illinois, however, the conditional sale contract is not treated as a mortgage, and recording it as a mortgage does not operate as constructive notice to third parties.¹² This is the prevailing rule.

⁵Burdick, Sales (3rd ed.) 218 and authorities cited.

⁶Goss Printing-Press Co. v. Jordan (1895) 171 Pa. 474, 32 Atl. 1031.

⁷Ill. Laws of 1893, 166, Jones & Add. Ill. 1913, §§ 8799-8800; Pa. Laws of 1883, No. 176, 4 Purdon's Dig. Pa. 1910, 3917, Pa. Laws of 1915, No. 386, at pp. 866-869.

⁸Wait v. Green (1867) 36 N. Y. 556 and the prior cases cited in the opinion, as well as 2 Kent, Comm. 497, 498.

⁹Ballard v. Burgett (1869) 40 N. Y. 314. The authorities are cited and discussed with much care, especially in the opinion of Lott, J.

¹⁰Herring v. Hoppock (1857) 15 N. Y. 409, 414.

¹¹Wender Blue Gem Coal Co. v. Louisville Property Co., *supra*, footnote 2, at pp. 347-348.

¹²Gilbert v. National Cash Register Co. (1898) 176 Ill. 288, 52 N. E. 22.

Even in the jurisdictions above referred to, the rule generally obtains that a conditional sale contract is valid as between the parties and as against creditors and purchasers with notice.¹³

Undoubtedly, a conditional sale does enable the purchaser to impose upon third parties. Having possession of the property with the consent of the seller, and with the right to become owner upon payment of the price without further act on the part of the seller, he has the appearance of being the present owner. Persons give him credit, or buy the property from him, on the strength of this appearance. As early as 1870, Vermont enacted that no lien reserved on personal property sold conditionally and passing into the hands of the conditional purchaser, should be valid against attaching creditors or subsequent purchasers, unless a written memorandum signed by the purchaser, witnessing such lien and the sum due thereon should be recorded in the town clerk's office as required by the statute.¹⁴ A similar act was passed in Iowa,¹⁵ three years later, and in Missouri in 1877.¹⁶ The object of these statutes was judicially declared to be,¹⁷

"to prevent secret and unrecorded transactions and contracts of sale from being used to the detriment of unsuspecting creditors of, or purchasers from, the vendee of personal property apparently the owner thereof."

New York legislation upon this topic began with an act requiring conditional sales of railroad equipment and rolling stock to be in writing, duly acknowledged and recorded; and requiring each locomotive or car to be properly labeled with the vendor's name, in order to be valid "as to any subsequent judgment creditor of or any subsequent purchaser for a valuable consideration, without notice."¹⁸ In the following year, an act was passed covering

¹³*Coors v. Reagan*, *supra*, footnote 2; *Hooven, etc. Co. v. Burdette* (1894) 153 Ill. 672, 39 N. E. 1107; *Lyon & Healy v. Walldren* (1916) 201 Ill. App. 609; *Lincoln v. Quynn*, *supra*, footnote 2.

¹⁴*Kelsey v. Kendall* (1875) 48 Vt. 24. South Carolina passed an act on this subject as early as 1843—now § 3740, Code of 1912—construed in *Herring & Co. v. Cannon* (1883) 21 S. C. 212.

¹⁵*Knoulton v. Redenbaugh* (1874) 40 Iowa 114.

¹⁶*Peet v. Spencer* (1886) 90 Mo. 384.

¹⁷*Coover v. Johnson* (1885) 86 Mo. 533, 538.

¹⁸N. Y. Laws of 1883, c. 383. With some modifications the act is now § 61 of the Personal Property Law.

all conditional sales of goods and chattels.¹⁹ It invalidated such sales "as against subsequent purchasers and mortgagees in good faith", unless the contract or a true copy was filed in a specified office, subject to inspection by "all persons interested". The contract ceased to be valid at the end of a year from filing, unless a true copy was refiled. Provision was made for satisfying and discharging of record these instruments.

Ten years later, the legislature excepted from the operation of the act of 1884 a considerable list of chattels, "provided that the contract for the sale of the same be executed in duplicate, and one duplicate shall be delivered to the purchaser."²⁰ It was further enacted that if the vendor retook goods of this character, he should retain them for thirty days, before selling. During this period the vendee, or his successor in interest, had the right to "fulfill such contract or purchase". If he did not avail himself of this right, the vendor could then proceed to sell the goods at public auction, retaining from the proceeds any balance due him for the price and the expense of storing, advertising, and selling; and paying any surplus to the vendee or his successor in interest. Later these exceptions were stricken from the statute,²¹ but the provisions for holding the property for redemption, and for the application of the proceeds of sale were made applicable to all conditional sale transactions.²²

It will be observed that the New York legislation aims not only to secure innocent third persons from being imposed upon by the conditional vendee in possession, but also to protect the vendee from the common-law consequences of default. It proceeds upon the theory that a vendee, who has paid a part of the purchase price, is entitled to an interest in the goods, which he should not forfeit by mere default in a subsequent payment; that he should be treated as though he were a mortgagor of the goods, and be accorded an opportunity to redeem. Between the two lines of legislation, represented respectively by the Iowa and the New York statutes above

¹⁹N. Y. Laws of 1884, c. 315. With modifications it forms §§ 62-64 of the Personal Property Law.

²⁰N. Y. Laws of 1894, c. 420. The goods so excepted were "household goods, pianos, organs, scales, engines, boilers and portable furnaces, and boilers for heating purposes, portable saw-mills and saw-machines, threshing machines and horse powers, mowing machines, reapers and harvesters and grain drills, with their attachments; vehicles, coaches, hearses, carriages, buggies and phaetons, bicycles and tricycles of all kinds, and any other device for locomotion by human power".

²¹N. Y. Laws of 1905, c. 503.

²²N. Y. Personal Property Law, §§ 65-67.

referred to, we have, in the thirty states which have legislated on this topic, a medley of acts not easy to classify. Moreover, judicial decisions are distressingly divergent upon many questions which have arisen under conditional sale contracts.²³

Accordingly, the Commissioners on Uniform State Laws have had prepared a draft of a Uniform Conditional Sales Act, which, it is believed, will improve this branch of the law in every jurisdiction, and, if it is everywhere enacted, will result in unification of doctrine and decision.²⁴

The draft proceeds upon the theory that, while a conditional sale is to be distinguished from a chattel mortgage, the rights of the conditional vendor and vendee are similar in many respects to those of mortgagor and mortgagee. In the language of its draftsman it conforms to the chattel mortgage theory. At the meeting of the commissioners, last summer, it was suggested that the act be discarded, and, in its place a brief statute be recommended, to the effect that every conditional sale be declared a chattel mortgage and be subjected to existing statutes on that topic.²⁵ The suggestion did not meet with favor. It was the opinion of the great majority of the commissioners, that a conditional sale differs, in substance as well as in form, from a chattel mortgage, and that sound business policy is subserved by continuing this distinction. The primary purpose of a chattel mortgage is to secure a debt due the mortgagee by giving him a defeasible title to certain goods of the mortgagor. The primary purpose of a conditional sale is to prevent ownership of certain goods passing to the purchaser, until a stipulated event—usually the payment of the price.²⁶

²³See 3 Cornell Law Quarterly 2; Burdick, Law of Sales (3rd ed.) 216-221.

²⁴A copy of the third tentative draft is appended to this article. It was prepared by Professor George G. Bogert of Cornell University College of Law, now Major Bogert, Assistant Judge Advocate at Camp Dix. Its history is briefly sketched by the learned draftsman in 3 Cornell Law Quarterly 1.

²⁵Although the advocate of this view did not refer to the Texas statute, its purport is similar, to wit: "All reservation of the title to or property in chattels, as security for the purchase money thereof, shall be held to be chattel mortgages, and shall, when possession is delivered to the vendee, be void as to creditors and bona fide purchasers, unless such reservations be in writing and registered as required of chattel mortgages". 4 Vernon's Sayles' Tex. Civ. Stat. 1914, Art. 5654. *Harling v. Creech* (1895) 88 Tex. 300, 31 S. W. 357.

²⁶*Roberston v. Campbell and Wheeler* (1800) 6 Va. *421, *429, where the court said: "The great *desideratum*, which this Court has made the ground of their decision, is, whether the purpose of the parties was to treat of a purchase, the value of the commodity contemplated, and the

There is no doubt that business interests prefer the conditional sale to the chattel mortgage. This is shown by the immense volume of conditional sale transactions, by the increasing legislation on this topic, and, especially, by the fact that nearly every state, including Illinois, Kentucky, Louisiana and Pennsylvania, has validated and regulated by statute, conditional sales of railroad equipment.²⁷

At common law, the conditional sale possessed for the seller decided advantages over the chattel mortgage. It provided him with a speedy and effective method of "self help". It gave to the buyer no equity of redemption.²⁸ It was often used by the seller as a means of oppressing the needy and as a vehicle of extortion.²⁹ While the Uniform Conditional Sales Act undertakes to prevent the seller from using his contract as an instrument of oppression or extortion, it secures to him every legitimate and fair advantage which that form of contract possesses over the chattel mortgage.

Let us examine the act with some care. The first section is devoted to "definitions" and need not detain us long. It should be noted, however, that a sale is conditional under this statute, whether the condition of passing the property is the payment of part or all of the price or "the performance of any other condition or the happening of any contingency".³⁰ The definition includes also any bailment or leasing of goods, under which the bailee or lessee is to pay as compensation a sum substantially equivalent to the value of the goods.³¹ Such bailment or lease is a mere subter-

price fixed? Or, whether, the object was the loan of money, and a security or pledge for the re-payment, intended?" This case was followed in *Earp v. Boothe* (1874) 65 Va. 368, 374, where it was said: "Generally speaking the difference between them is, that the one is a *security* for a debt, the other a *purchase* for a price paid, or to be paid, to become absolute in a particular event".

²⁷Major Bogert notes the striking similarity of the railroad equipment statutes, and adds: "These existing acts are said to have been passed as a result of the efforts of the Baldwin Locomotive Works and other corporations interested in the sale of railway equipment". 3 Cornell Law Quarterly 9.

²⁸*Bingham v. Vandegrift* (1890) 93 Ala. 283, 286, 9 So. 280; *Hughes v. Harlam* (1901) 166 N. Y. 427, 431, 60 N. E. 22.

²⁹*Earp v. Boothe*, *supra*, footnote 26.

³⁰The draft follows on this point existing legislation in Iowa, Nebraska, New Jersey, New York, Virginia, West Virginia, Wisconsin and Wyoming.

³¹This codifies the doctrine of such cases as *Singer Sewing Machine Co. v. Holcomb* (1874) 40 Iowa 33, and *Bramhall, Deane Co. v. McDonald* (1916) 172 App. Div. 780, 158 N. Y. Supp. 736 (a lease of a kitchen and serving pantry equipment for a rent of \$1,809, the agreed value thereof).

fuge and will not relieve the parties from compliance with the conditional sales statute.³²

Section two has undergone several changes from the original draft, as the result of careful and thorough consideration, both in the committee on commercial law and in the conferences of the commissioners. Instead of following the negative phraseology of existing statutes, its form is affirmative. "Every provision reserving property in the seller * * * shall be valid * * * if such contract is in writing" and duly filed. In at least two states, as pointed out above, the conditional sale is legally invalid, and fear was expressed that the negative form of statement (no provision reserving property, *etc.* shall be valid, unless the contract is in writing and filed) would result in an anomalous situation, should the Uniform Act be passed in those states.³³ Under this section, as it now stands, writing and filing of conditional sale contracts are required only "as against subsequent purchasers, mortgagees and pledgees from the buyer, for value, though without notice of the seller's title, and also as against creditors of the buyer who levy upon or attach the goods, though without notice of such title". This is an extension of the requirement as to creditors in New York,³⁴ a modification of it in some states,³⁵ and an adoption of existing law in others.³⁶

Either the original contract or a copy may be filed. Doubt was expressed by several commissioners about permitting the use of an unattested copy. As failure by the seller to file a true copy, or the original, would result in his losing the statutory protection, and as he will prefer to keep the original for use, in case of litigation, it would seem that he may be trusted to file a true copy. The provision appears to be self-executing. Moreover, the great majority of existing statutes permit the filing of an unattested copy.

Counsel for manufacturers, who do a large business on the conditional sales plan, asked that sellers have thirty days within which to file the writing. The seller's place of business is often far removed from the filing office, and to require immediate filing, it

³²*Gardner v. Town of Cameron* (1913) 155 App. Div. 750, 140 N. Y. Supp. 634, *aff'd.* without opinion (1915) 215 N. Y. 682, 109 N. E. 1074.

³³Major Bogert in 3 Cornell Law Quarterly 5.

³⁴N. Y. Personal Property Law § 62 makes void the unfiled contract only as against purchasers, mortgagees and pledgees.

³⁵Georgia, North Dakota, South Carolina and Washington protect creditors whose rights accrue subsequent to the sale.

³⁶Substantially the rule in Nebraska, New Jersey, Vermont and Wyoming.

was insisted, would operate harshly against him. This view was acceded to by the committee on commercial law,³⁷ but the conference were of the opinion that the seller could always prevent the buyer from obtaining possession, until the writing had been filed. Some delay in actual delivery of goods may be the result, but greater protection is afforded to purchasers and lien creditors of the conditional buyer; and the protection of these classes is the primary object of conditional sales statutes. Constructive notice begins with filing or registration.

Existing statutes differ as to the place of filing. The proposed law requires the writing to be filed in the office where deeds of real property are recorded, in the registration district (be it city, county, or other political subdivision) in which the goods are kept after the sale. It is believed that this section will work not only uniformity, but improvement in this branch of the law.³⁸

Several states have special statutory provisions as to conditional sales of fixtures, and section four of the present draft is modeled after them. Of course, if the articles are sold to become an integral part of the realty, as in the case of nails, laths, beams, shingles and the like, a reservation of title to them as chattels is a legal impossibility. This is recognized in the first sentence. But when the goods are to be so affixed as to be readily severable, there is no reason why the seller should not be allowed to reserve title thereto, provided a proper record of the contract be made in the office where a deed of the realty would be recorded. Such a record imposes no lien upon the realty. Nor does it operate in favor of mortgagees of the buyer, who become such prior to the conditional sale, or with notice of its existence.³⁹

The fifth section contains an admirably condensed statement of the existing statutory rule as to conditional sales of railroad equipment, and does not call for special comment.

³⁷Massachusetts and Tennessee do not require filing or registration; Connecticut requires "filing within a reasonable time"; District of Columbia, Oregon and Washington within ten days; New Hampshire within twenty, while Georgia and Vermont extend the time to thirty days. Most jurisdictions require immediate filing; or, to put it in another way, invalidate conditional sales as against purchasers and lien creditors until filing.

³⁸See 3 Cornell Law Quarterly 6-8.

³⁹*Tift v. Horton* (1873) 53 N. Y. 377 (engine and boiler to be put into the buyer's grain elevator); *York Mfg. Co. v. Cassell* (1906) 201 U. S. 344, 26 Sup. Ct. 481 (ice-making machinery; contract valid as against purchaser's trustee in bankruptcy, though not filed); *Holt v. Henley* (1914) 232 U. S. 637, 34 Sup. Ct. 459 (automatic sprinkler system and equipment, remained the personalty of seller, as against prior mortgagee and trustee in bankruptcy of buyer); *Ratchford v. Cayuga County C. S. & W. Co.* (1916) 217 N. Y. 565, 112 N. E. 447, L. R. A. 1916E, 615 (a refrigerating plant remained personalty).

Goods are often put by the owner into the possession of another as agent for sale. Such a transaction is not a conditional sale and is not subject to its rules but to those of agency.⁴⁰ If, however, they are put into the possession of one whose business it is to deal in such goods, and the owner consents, either expressly or impliedly, to the resale by the possessor, a reservation of title ought not to avail him against such second purchasers for value and without notice. His conduct should estop him from claiming the goods as against them.⁴¹ If, however, the conditional vendor does not give his consent to a resale, and does not know that the buyer is a dealer in such goods, there is no ground for estoppel.⁴² Such is the doctrine, codified in the sixth section, which relieves the *bona fide* purchaser from a conditional vendee, who received the goods for the known purpose of resale, from examining the records. He is exempted from constructive notice. The last clause of the section, however, very properly subjects to such notice all other persons, including creditors, trustees in bankruptcy, and purchasers with actual notice.⁴³

Section eight requires the sale contract to be refiled at the expiration of three years, and annually thereafter in the case of goods, other than railway equipment, and fifteen years in the case of such equipment. The refiling is to be made within thirty days of the expiration of the prescribed period, and is to consist in a copy of the contract and a statement that the contract is still in force and of the amount remaining unpaid. This provision is in the interest of purchasers and creditors, relieving them from examining the records through an indefinite period.

The earliest conditional sale statutes made no provision for compelling a cancellation of the registered or filed contract. Later

⁴⁰*Keystone Watch Case Co. v. Fourth Street Natl. Bank* (1900) 194 Pa. 535, 45 Atl. 328; *Richardson Mfg. Co. v. Brooks* (1901) 95 Me. 146, 49 Atl. 672; *Norris v. Boston Music Co.* (1915) 129 Minn. 198, 151 N. W. 971, L. R. A. 1917B, 615.

⁴¹*Columbus Buggy Co. v. Turley & Parker* (1896) 73 Miss. 529, 537, 19 So. 232, 32 L. R. A. 260, 55 Am. S. R. 550 ("To permit the vendor in a conditional sale of personal property, bought in the course of trade for resale, to retain title and at the same time authorize the buyer to resell, would operate as a fraud upon innocent purchasers.").

⁴²*Fairbanks Co. v. Graves* (1907) 90 Miss. 453, 459, 43 So. 675 ("There is nothing in the law which prohibits one merchant from selling an article of merchandise to another merchant, with reservation of title until the purchase money is paid, unless the article sold is meant to be resold, or is of such character as that it may be fairly inferred, when the sale is made, that the purpose of the purchase is to resell it.").

⁴³*Mishawaka Woolen Mfg. Co. v. Stanton* (1915) 188 Mich. 237, 154 N. W. 48, L. R. A. 1917B, 651, with note 658-667.

legislation has corrected this defect, and its best features are reproduced in section nine. Upon written demand, after performance of the condition, the seller must execute and deliver a "statement of satisfaction" or pay a penalty of five dollars. This satisfaction must be filed by the proper officer upon the tender of the statutory fee. Thereupon the record is cleared and evidence is preserved of ownership in the conditional vendee or his successor in interest.

While the conditional vendee before default is entitled to use the property and even to dispose of his interest in it, he should not be allowed to remove it from the registration district, nor to sell or encumber his interest without giving notice to the seller. Sections ten and eleven cover this topic with commendable care. The seller is permitted to stipulate in his original contract against removal of the goods to another district or state. In the absence of such stipulation, the buyer may remove the goods, upon giving written notice of five days. After such removal, the seller must file the contract in the district to which the goods are removed, so that third parties there may have notice of the possessor's lack of ownership. If the buyer removes the goods without such notice, the seller may retake them and deal with them as in the case of default of payment. If the buyer removes, injures, destroys or conceals the goods "maliciously or with intent to defraud" he becomes liable, under section twelve, to criminal punishment.

The courts have experienced much difficulty in determining questions arising from the vendee's default and the vendor's recaption of the goods,⁴⁴ and their decisions have been far from harmonious. It is the purpose of sections thirteen to twenty-six inclusive to clear away all difficulties and to insure uniformity in judicial determinations on this topic.

The seller is allowed to retake the goods, upon the buyer's default, without avoiding the contract or imperilling his right to the balance of the purchase price. Nor is this right of recaption lost by suing or obtaining judgment for the price.⁴⁵ Of course, he is not permitted to retake the goods, after he has collected the price, nor

⁴⁴Some of these are stated and considered in *Dudley v. Abner* (1875) 52 Ala. 572, 578; *Preston v. Whitney* (1871) 23 Mich. 260; *McGinnis v. Savage* (1887) 29 W. Va. 362, 370, 1 S. E. 746.

⁴⁵*Burdick*, Law of Sales (3rd ed.) 220 and cases cited in notes 1 and 2; *Guth Piano Co. v. Adams* (1916) 114 Me. 390, 96 Atl. 722; *Ratchford v. Cayuga County C. S. & W. Co.*, *supra*, footnote 39; *contra*, *Eilers Music House v. Douglass* (1916) 90 Wash. 683, 156 Pac. 937, L. R. A. 1916E, 613; *Norman v. Meeker* (1916) 91 Wash. 534, 158 Pac. 78, Ann. Cas. 1917D, 462.

after he has claimed a lien on the goods, or attached them, or levied upon them as the property of the buyer.⁴⁶

At common law, as we have seen, the defaulted buyer had not the right of redemption, and the seller could hold the retaken goods and whatever of the price he had received. The statute, however, secures to him an opportunity for redemption, in one of two ways. If the seller gives him notice that the goods will be retaken upon default, the buyer has twenty days at least within which to perform his broken obligations. In case he does not perform, the seller may retake the goods, resell them in accordance with the statutory requirements, and recover from the buyer any balance due on the purchase price, after applying the net proceeds towards such price.⁴⁷ When the seller does not give such notice, he is required to hold the goods for ten days after retaking, during which time the buyer may redeem by performing his broken obligations and paying "the expenses of retaking, keeping and storage".

Section fourteen, providing for notice of intention to retake, is new legislation, and was inserted upon the suggestion of business men with large experience in conditional sales. It secures to the buyer ample opportunity to perform his obligations, if he cares to protect his equity of redemption but does not force the seller, who may live at a distance, to make two trips to the locality of the goods and to incur the expense of storing the goods during the period of grace accorded the buyer for redemption.

If the seller considers it unsafe to leave the goods in the hands of the buyer, he is allowed by section fifteen to retake the goods immediately upon the buyer's default. In such case, he must hold them within the state (unless they are railway equipment, when they may be removed from the state) for ten days. If they are perishable, he may sell at once. Upon written demand by the buyer, he shall furnish a statement of the sum due and the expenses of retaking, keeping and storage. Failure to comply with this requirement subjects him to payment of a fine of ten dollars, and of damages suffered by the buyer because of the failure. The business men, who appeared before the committee on commercial law, declared that defaulting buyers rarely sought to avail themselves of the right to redeem; but the committee and the conference believed

⁴⁶*Kirk v. Crystal* (1907) 118 App. Div. 32, 103 N. Y. Supp 17, *aff'd.* without opinion (1908) 193 N. Y. 622, 86 N. E. 1126.

⁴⁷This is quite in accordance with the rule laid down in *Harkness v. Russell*, *supra*, footnote 3.

that this right should be definitely assured and regulated by the statute.

It will be observed that the act does not countenance the doctrine that the seller rescinds the contract by retaking the goods and holding them as security for the balance due.⁴⁸ If, however, he holds the retaken goods as sole owner, his act should be treated as a rescission.⁴⁹ This is the rule approved by section eighteen, when the buyer has paid less than fifty per cent. of the price. In such a case, the probability is that the buyer's equity of redemption is worthless; that the goods, depreciated by use, will not bring enough to yield a surplus over the balance of the price and expenses of retaking, storing and selling. Hence, the seller is allowed to keep the goods as his own and discharge the buyer from all obligation under the contract, unless the latter, within ten days after retaking makes a written demand for resale. When less than half of the price has been paid, the seller is accorded a like option of notifying the buyer that he will not hold the goods as his own, but will deal with them on the buyer's behalf and look to him for any consequent deficiency.

If the buyer has paid more than half of the price, the seller has not the option referred to in the last preceding paragraph, but is bound to bring the goods to a resale, under carefully prescribed but entirely fair requirements, (§ 16) or the buyer may recover from him all payments made under the contract, with interest. (§ 23).

Experience has shown that not only is the buyer frequently inferior to the seller in business shrewdness, but that the seller resorts to unfair practices throwing the buyer off his guard. Hence, modern legislators are in the habit of putting the conditional buyer, as presumably the poorer, the weaker and the more credulous party, under statutory tutelage, and incapacitating him from waiving in advance the legislative provisions in his favor.⁵⁰ After the

⁴⁸The doctrine of the statute is applied in such cases as *International Harvester Co. v. Bauer* (1917) 82 Ore. 686, 162 Pac. 856; see opinion of Sanborn, J., in *Manson v. Dayton* (C. C. A. 1907) 153 Fed. 258.

⁴⁹*Madison River Livestock Co. v. Osler* (1909) 39 Mont. 244, 102 Pac. 325; *I. X. L. Stores Co. v. Moon* (Utah 1916) 162 Pac. 622.

⁵⁰*Desseau v. Holmes* (1905) 187 Mass. 486, 73 N. E. 656. The rule, that a waiver of equity of redemption by borrowers, who are apt to be improvident persons, in straits to obtain money, is void as against public policy, was declared to be peculiarly applicable to conditional sales "which are made so commonly by shopkeepers in supplying householders of small means with furniture and other similar articles." 187 Mass., at p. 482. See *Adler v. Weis & Fisher Co.* (1916) 218 N. Y. 295, 299, 112 N. E. 1049, and cases referred to in the opinion.

contract has been made, he is deemed competent to take care of himself, and may validly waive statutory benefits.⁵¹

As the buyer in a conditional sale transaction gets more than a contract right to acquire ownership, as he gets possession and an equitable interest in the goods, (§ 25), the Uniform Act properly provides that the "seller shall be liable to the buyer for the breach of all promises and warranties, express or implied".⁵²

It is hoped that every reader of this article will study carefully the draft which follows, and will send to the chairman of the committee on commercial law,⁵³ any criticism, suggestion or commendation which he deems important. He may be sure that his views will be welcomed and that any assistance given in perfecting this Uniform Condition Sales Act will be appreciated.

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⁵¹N. Y. Personal Property Law §§ 62-65; Uniform Conditional Sales Act § 24.

⁵²*Rogers & Thornton v. Otto Gas Engine Works* (1910) 7 Ga. App. 587, 67 S. E. 700; *Peuser v. Marsh* (1915) 167 App. Div. 604, 153 N. Y. Supp. 381.

⁵³The chairman of the committee is Hon. Walter G. Smith, 711 Witherspoon Bldg., Philadelphia, Pa.

APPENDIX

AN ACT TO MAKE UNIFORM THE LAW OF CONDITIONAL SALES.

Be it Enacted by

Section 1. (Definitions.) The term "conditional sale", as used in this act, means (1) any contract for the sale of goods under which possession is delivered to the buyer and the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (2) any contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value of the goods, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner of such goods upon full compliance with the terms of the contract.

The term "seller" as used in this act means the person who sells or leases the goods covered by the conditional sale, or any legal successor in interest of such person.

The term "buyer" as used in this act means the person who buys or hires the goods covered by the conditional sale, or any legal successor in interest of such person.

The term "goods" as used in this act means all chattels personal other than things in action and money, and includes emblements, industrial growing crops, and things attached to or forming a part of land which are agreed to be severed before sale or under the conditional sale.

The term "filing district" as used in this act means the subdivision of the state in which conditional sale contracts, or copies thereof, are required by this act to be filed.

The phrase "performance of the condition" as used in this act means the occurrence of the event upon which the property in the goods is to vest in the buyer, whether such event is the performance of an act by the buyer or the happening of a contingency.

Section 2. (Contract to be Filed.) Every provision reserving property in the seller while possession of the goods is in the buyer shall be valid between buyer and seller without writing or filing; and, except as provided in Section 11, the reservation shall be valid as against subsequent purchasers, mortgagees and pledgees from the buyer, for value, though without notice of the seller's title, and also as against creditors of the buyer who levy upon or attach the goods, though without notice of such title, if such contract is in writing and the original or a copy thereof shall have been filed as hereinafter prescribed, previous to such sale, mortgage, pledge, levy or attachment. Except as provided in Section 5, it shall not be necessary to the validity of such conditional sale contract, or in order to entitle it to be filed, that such contract be acknowledged or attested.

Section 3. (Place of Filing.) The conditional sale contract or copy shall be filed in the office where deeds of real property are recorded in the (city,) county, (or registration district) in which the goods are kept after the sale. This section shall not apply to the contracts described in Section 5.

Section 4. (Fixtures.) If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become a part thereof and not to be readily severable, the reservation of property shall be void after the goods are so affixed. If the goods are so affixed to realty at the time of a conditional sale or subsequently as to become part thereof but to be readily severable, the reservation of property shall be void after the goods are so affixed as against subsequent purchasers or mortgagees of the realty for value and without notice of the conditional seller's title, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller and stating that the goods are or are to be affixed thereto, shall be filed previous to such purchase or mortgage in the office where a deed of the realty would be recorded. As against the owner of realty the reservation of the property in goods by a conditional seller shall be void when such goods are to be so affixed to the realty as to become part thereof but to be readily severable, unless the conditional sale contract, or a copy thereof, together with a statement signed by the seller briefly describing the realty and stating that the goods are to be affixed thereto, shall be filed previous to the affixing in the office where a deed of the realty would be recorded.

Section 5. (Railroad Equipment or Rolling Stock.) No conditional sale of railroad, street or interurban railway equipment or rolling stock shall be valid as against the purchasers, mortgagees, pledgees and creditors described in Section 2, unless the contract shall be acknowledged by the buyer or attested in like manner as a deed of real property, and the contract, or a copy thereof, shall be filed in the office of the Secretary of State; and unless there shall be plainly and conspicuously marked upon each side of any engine or car so sold the name of the seller, followed by the word "owner".

Section 6. (Conditional Sale of Goods for Resale.) When goods are sold under a conditional sale contract, and the seller expressly or impliedly consents that the buyer may resell them prior to performance of the condition, the reservation of property shall be void against purchasers from the buyer for value in the ordinary course of business, and as to them the buyer shall be deemed the owner of the goods, even though the contract, or a copy thereof, shall be filed according to the provisions of this act; but as to other persons the transaction shall be governed by Section 2.

Section 7. (Filing.) The filing officer shall mark upon the contract or copy filed with him the day and hour of filing and shall file the contract or copy in his office for public inspection. He shall

keep a book in which he shall enter the names of the seller and buyer, the date of the contract, the day and hour of filing, a brief description of the goods, the price named in the contract and the date of cancellation thereof; except that in entering the contracts mentioned in Section 5 the Secretary of State shall record either the sum remaining to be paid upon the contract or the price of the goods. Such book shall be indexed under the names of both seller and buyer. For filing and entering such contract or copy the filing officer shall be entitled to a fee of (ten cents), except that for filing and entering a contract described in Section 5 the Secretary of State shall be entitled to a fee of (one dollar).

Section 8. (Refiling.) The filing of conditional sale contracts provided for in Sections 2, 3 and 4 shall be valid for a period of three years only. The filing of the contract provided for by Section 5 shall be valid for a period of fifteen years only. The validity of the filing may in each case be extended for successive additional periods of one year from the date of refiling by filing in the proper filing district a copy of the original contract within thirty days preceding the expiration of each period, with a statement attached signed by the seller, showing that the contract is in force and the amount remaining to be paid thereon. Such copy, with statement attached, shall be filed and entered in the same manner as a contract or copy filed and entered for the first time, and the filing officer shall be entitled to a like fee as upon the original filing.

Section 9. (Cancellation of Contract.) After the performance of the condition, upon written demand delivered personally or by registered mail by the buyer or any other person having an interest in the goods, the seller shall execute and deliver to the demandant a statement that the condition in the contract is performed and that the buyer has become the owner of the goods. If for ten days after such demand the seller fails to mail or deliver such a statement of satisfaction, he shall forfeit to the demandant five dollars (\$5.00) and be liable for all damages suffered. Upon presentation of such statement of satisfaction the filing officer shall file the same and note the cancellation of the contract and the date thereof on the margin of the page where the contract has been entered. For filing and entering the statement of satisfaction the filing officer shall be entitled to a fee of (ten cents), except that the Secretary of State shall be entitled to a fee of (fifty cents) for filing and entering a statement of the satisfaction of a contract described in Section 5.

Section 10. (Prohibition of Removal or Sale Without Notice.) Unless the contract otherwise provides, the buyer under a conditional sale contract may, without the consent of the seller, remove the goods from any filing district and sell, mortgage or otherwise dispose of his interest in the goods; but prior to the performance of the condition, no such buyer shall remove the goods from a filing district in which the contract or a copy thereof is filed, except for temporary uses for a period of not more than thirty days, unless

the buyer not less than five days before such removal shall give the seller personally or by registered mail written notice of the place to which the goods are to be removed and the approximate time of such intended removal; nor, prior to the performance of the condition, shall the buyer sell, mortgage or otherwise dispose of his interest in the goods, unless the buyer or the person to whom he is about to sell, mortgage or otherwise dispose of his interest in the goods, shall notify the seller in writing personally or by registered mail of the name and address of the person to whom his interest in the goods is about to be sold, mortgaged or otherwise transferred, not less than five days before such sale, mortgage or other disposal. If any buyer does so remove the goods, or does so sell, mortgage or otherwise dispose of his interest in the goods without such notice, the seller may retake possession of the goods and deal with them as in case of default in payment of part or all of the purchase price. The provisions of this section regarding the removal of goods shall not apply, however, to the goods described in Section 5.

Section 11. (Refiling on Removal.) When, prior to the performance of the condition, the goods are removed by the buyer from a filing district in this state to another filing district in this state in which such contract or a copy thereof is not filed, or are removed from another state into a filing district in this state where such contract or copy is not filed, the reservation of the property in the seller shall be void as to the purchasers, mortgagees, pledgees and creditors described in Section 2, unless the conditional sale contract, or a copy thereof, shall be filed in the filing district to which the goods are removed, within thirty days after the seller has knowledge of the filing district to which the goods have been removed. The provisions of this section shall not apply, however, to the goods described in Section 5. The provisions of Section 8 regarding the duration of the validity of the filing and the necessity for refiling shall apply to contracts or copies which are filed in a filing district other than that where the goods are kept after the sale.

Section 12. (Fraudulent Injury, Concealment, Removal or Sale.) Wherever prior to the performance of the condition the buyer maliciously or with intent to defraud shall injure, destroy or conceal the goods, or remove them to a filing district where the contract or a copy thereof is not filed, without having given the notice required by Section 10, or shall sell, mortgage, or otherwise dispose of such goods under claim of full ownership, he shall be guilty of a crime and upon conviction thereof shall be imprisoned in the county jail for not more than one year or be fined not more than (\$500) or both.

Section 13. (Retaking Possession.) When the buyer under a conditional sale shall be in default in the payment of any sum due under the contract, or in the performance of any other condition which the contract requires him to perform in order to

obtain the property in the goods, or in the performance of any promise, the breach of which is by the contract expressly made a ground for the retaking of the goods, the seller may retake possession thereof. Unless the goods can be retaken without breach of the peace, they shall be retaken by legal process.

Section 14. (Notice of Intention to Retake.) Not more than forty nor less than twenty days prior to the retaking, the seller may serve upon the buyer personally or by registered mail a notice of intention to retake the goods on account of the buyer's default. The notice shall state the default and the time of intended retaking, and shall briefly and clearly state what the buyer's rights under this act will be in case the goods are retaken. If the notice is so served and the buyer does not perform, before the day set for retaking, the obligations in which he has made default, the seller may retake the goods and hold them subject to the provisions of Sections 16, 17, 18, 19 and 20 regarding resale, but without any right on the part of the buyer to redeem the goods.

Section 15. (Redemption.) If the seller does not give the notice of intention to retake described in Section 14, he shall retain the goods for ten days after the retaking within the state in which they were located at the time of the retaking, during which time the buyer, upon payment or tender of the amount due under the contract at the time of retaking and interest, or upon performance or tender of performance of such other condition as may be named in the contract as precedent to the passage of the property in the goods, or upon performance or tender of performance of any other promise for the breach of which the goods were retaken, and upon payment of the expenses of retaking, keeping and storage, may redeem the goods and become entitled to take possession of them and to continue in the performance of the contract as if no default had occurred. Upon written demand delivered personally or by registered mail by the buyer, the seller shall furnish to the buyer a written statement of the sum due under the contract and the expenses of retaking, keeping and storage. For failure to furnish such statement within a reasonable time after demand, the seller shall forfeit to the buyer (\$10), and also be liable to him for all damages suffered because of such failure. If the goods are perishable so that retention for ten days as herein prescribed would result in their destruction or substantial injury, the provisions of this section shall not apply, and the seller may resell the goods immediately upon their retaking. The provision of this section requiring the retention of the goods within the state during the period allowed for redemption shall not apply to the goods described in Section 5.

Section 16. (Compulsory Resale by Seller.) If the buyer does not redeem the goods within ten days after the seller has retaken possession, and the buyer has paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall sell them at public auction in the state where they were at the time of the

retaking, such sale to be held not more than thirty days after the retaking. The seller shall give to the buyer not less than ten days' written notice of the sale, either personally or by registered mail in a post-paid envelope directed to the buyer at his last known place of business or residence. The seller shall also give notice of the sale by at least three notices posted in different public places within the filing district where the goods are to be sold, at least five days before the sale. If at the time of the retaking \$500 or more had been paid on the purchase price, the seller shall also give notice of the sale at least five days before the sale by publication in a newspaper published or having a general circulation within the filing district where the goods are to be sold. The seller may bid for the goods at the resale. If the goods are of the kind described in Section 5, the parties may fix in the conditional sale contract the place where the goods shall be resold.

Section 17. (Resale at Option of Parties.) If the buyer has not paid at least fifty per cent of the purchase price at the time of the retaking, the seller shall not be under a duty to resell the goods as prescribed in Section 16, unless the buyer serves upon the seller, within ten days after the retaking, a written notice delivered personally or by registered mail demanding a resale. If such notice is served, the resale shall take place within thirty days after the service, in the manner, at the place and upon the notice prescribed in Section 16. The seller may voluntarily resell the goods on behalf of the buyer on compliance with the same requirements.

Section 18. (Rights of Parties Where There is no Resale.) Where there is no resale, the seller may retain the goods as his own property without obligation to account to the buyer except as provided in Section 23, and the buyer shall be discharged of all obligation.

Section 19. (Proceeds of Resale.) The proceeds of the resale shall be applied (1) to the payment of the expenses thereof, (2) to the payment of the expenses of retaking, keeping and storing the goods, (3) to the satisfaction of the balance due on the purchase price. Any sum remaining after the satisfaction of such claims shall be paid to the buyer.

Section 20. (Deficiency on Resale.) If the proceeds of the resale are not sufficient to defray the expenses thereof, and also the expenses of retaking, keeping and storing the goods and the balance due upon the purchase price, the seller may recover the deficiency from the buyer, or from anyone who has succeeded to the obligations of the buyer.

Section 21. (Action for Price.) The seller may sue for the whole or any installment of the purchase price as the same shall become due under the conditional sale.

Section 22. (Election of Remedies.) After the retaking of possession as provided in Section 13 the buyer shall be liable for the price only after a resale and only to the extent provided in Section

20. Neither the bringing of an action by the seller for the recovery of the whole or any part of the price, nor the recovery of judgment in such action, nor the collection of a portion of the price, shall be deemed inconsistent with a later retaking of the goods as provided in Section 13. But such right of retaking shall not be exercised by the seller after he has collected the entire price, or after he has claimed a lien upon the goods, or attached them, or levied upon them as the goods of the buyer.

Section 23. (Recovery of Part Payments.) If the seller fails to comply with the provisions of Sections 15, 16, 17, 18 and 19 after retaking the goods, the buyer may recover from the seller all payments which have been made under the contract, with interest.

Section 24. (Waiver of Statutory Protection.) No act or agreement of the buyer before or at the time of the making of the contract, nor any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of Sections 15, 16, 17, 18 and 19.

Section 25. (Additional Rights of Buyer.) The buyer under a conditional sale shall have the right when not in default to retain possession of the goods, and he shall also have the right to acquire the property in the goods on the performance of the conditions of the contract. The seller shall be liable to the buyer for the breach of all promises and warranties, express or implied, made in the conditional sale contract, whether the property in the goods has passed to the buyer at the time of such breach or not.

Section 26. (Loss and Increase.) After the delivery of the goods to the buyer and prior to the retaking of them by the seller, the risk of injury and loss shall rest upon the buyer. The increase of goods sold under a conditional sale shall be subject to the same conditions as the original goods.

Section 27. (Act Prospective Only.) This act shall not apply to conditional sales made prior to the time when it takes effect.

Section 28. (Rules for Cases not Provided for.) In any case not provided for in this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to conditional sales.

Section 29. (Uniformity of Interpretation.) This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Section 30. (Title of Act.) This act may be cited as the Uniform Conditional Sales Act.

Section 31. (Inconsistent Laws Repealed.) (Here repeal all existing acts in the field of conditional sales.) But the laws repealed by this section shall apply to all conditional sales made prior to the time when this act takes effect.

Section 32. This act shall take effect.....